

AMENDED IN SENATE JANUARY 23, 2006

AMENDED IN SENATE APRIL 19, 2005

SENATE BILL

No. 17

Introduced by Senator Escutia

December 6, 2004

~~An act to amend Sections 64 and 482 of, to add Section 486 to, to repeal Section 480.2 of, and to repeal and add Section 480.1 of, the Revenue and Taxation Code, relating to property taxation, to take effect immediately, tax levy. An act to amend Section 64 of the Revenue and Taxation Code, relating to property taxation.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 17, as amended, Escutia. Property tax: change in ownership.

The California Constitution generally limits ad valorem taxes on real property to 1% of the full cash value of that property. For purposes of this limitation, "full cash value" is defined as the assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. Existing property tax law specifies those circumstances in which the transfer of ownership interests in a corporation, partnership, limited liability company, or other legal entity results in a change in ownership of the real property owned by that entity, and generally provides that a change in ownership as so described occurs when a legal entity or other person obtains a controlling or majority ownership interest in the legal entity. Existing law also specifies other circumstances in which certain transfers of ownership interests in legal entities result in a change in ownership of the real property owned by those legal entities *law requires the Franchise Tax Board to include a question on the income tax returns*

of specified entities regarding changes in ownership of the real property owned by the entity. Existing law requires the Franchise Tax Board to notify the State Board of Equalization if an entity answers “yes” to this question.

This bill would instead provide that all of the real property owned by a legal entity that is not a publicly traded company, as defined, in the state has undergone a change in ownership when over 50% of the ownership interests in that entity have been transferred to one or more persons or entities in one or more transactions during an assessment year, as specified additionally require the Franchise Tax Board to include in that question a query regarding real property leased by the entity.

This bill would also require the Franchise Tax Board to notify the State Board of Equalization if an entity does not respond to that question.

Existing law requires a person or entity that obtains a controlling or majority ownership interest in a legal entity, or an entity that makes specified transfers of ownership interests in the legal entity, to file a change in ownership statement, as specified, with the State Board of Equalization within 45 days of specified transactions, or whenever requested by that board. Existing law imposes a penalty of 10% of the taxes owed to the county on a parcel of real property if an assessee fails to file a change in ownership statement with the board within 45 days of a board request.

This bill would require a legal entity that owns real property that has undergone a change in ownership to file a change in ownership statement, as specified, with the board within 60 days of specified transactions and would impose specified penalties if the statement is not timely filed or contains misrepresentations. This bill would specify that these reporting provisions do not apply to property that is assessed by the State Board of Equalization, as provided. This bill would also make conforming changes to related provisions. This bill would also authorize the board and local assessors to subpoena witnesses and documents to assist in determining changes in ownership.

This bill would result in a change in state taxes for the purpose of increasing revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

~~By changing the manner in which local assessors determine changes in ownership of real property owned by legal entities, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~This bill would take effect immediately as a tax levy, but its operative date would be January 1, 2006.~~

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~ no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 64 of the Revenue and Taxation Code is
2 amended to read:

3 64. (a) Except as provided in subdivision (i) of Section 61 and
4 subdivisions (c) and (d) of this section, the purchase or transfer of
5 ownership interests in legal entities, such as corporate stock or
6 partnership or limited liability company interests, shall not be
7 deemed to constitute a transfer of the real property of the legal
8 entity. This subdivision is applicable to the purchase or transfer
9 of ownership interests in a partnership without regard to whether
10 it is a continuing or a dissolved partnership.

11 (b) Any corporate reorganization, where all of the corporations
12 involved are members of an affiliated group, and that qualifies as
13 a reorganization under Section 368 of the United States Internal
14 Revenue Code and that is accepted as a nontaxable event by similar
15 California statutes, or any transfer of real property among members
16 of an affiliated group, or any reorganization of farm credit
17 institutions pursuant to the federal Farm Credit Act of 1971 (Public
18 Law 92-181), as amended, shall not be a change of ownership.
19 The taxpayer shall furnish proof, under penalty of perjury, to the
20 assessor that the transfer meets the requirements of this subdivision.

21 For purposes of this subdivision, “affiliated group” means one
22 or more chains of corporations connected through stock ownership
23 with a common parent corporation if both of the following
24 conditions are met:

1 (1) One hundred percent of the voting stock, exclusive of any
2 share owned by directors, of each of the corporations, except the
3 parent corporation, is owned by one or more of the other
4 corporations.

5 (2) The common parent corporation owns, directly, 100 percent
6 of the voting stock, exclusive of any shares owned by directors,
7 of at least one of the other corporations.

8 (c) (1) When a corporation, partnership, limited liability
9 company, other legal entity, or any other person obtains control
10 through direct or indirect ownership or control of more than 50
11 percent of the voting stock of any corporation, or obtains a majority
12 ownership interest in any partnership, limited liability company,
13 or other legal entity through the purchase or transfer of corporate
14 stock, partnership, or limited liability company interest, or
15 ownership interests in other legal entities, including any purchase
16 or transfer of 50 percent or less of the ownership interest through
17 which control or a majority ownership interest is obtained, the
18 purchase or transfer of that stock or other interest shall be a change
19 of ownership of the real property owned by the corporation,
20 partnership, limited liability company, or other legal entity in which
21 the controlling interest is obtained.

22 (2) On or after January 1, 1996, when an owner of a majority
23 ownership interest in any partnership obtains all of the remaining
24 ownership interests in that partnership or otherwise becomes the
25 sole partner, the purchase or transfer of the minority interests,
26 subject to the appropriate application of the step-transaction
27 doctrine, shall not be a change in ownership of the real property
28 owned by the partnership.

29 (d) If property is transferred on or after March 1, 1975, to a
30 legal entity in a transaction excluded from change in ownership
31 by paragraph (2) of subdivision (a) of Section 62, then the persons
32 holding ownership interests in that legal entity immediately after
33 the transfer shall be considered the “original coowners.” Whenever
34 shares or other ownership interests representing cumulatively more
35 than 50 percent of the total interests in the entity are transferred
36 by any of the original coowners in one or more transactions, a
37 change in ownership of that real property owned by the legal entity
38 shall have occurred, and the property that was previously excluded
39 from change in ownership under the provisions of paragraph (2)
40 of subdivision (a) of Section 62 shall be reappraised.

1 The date of reappraisal shall be the date of the transfer of the
2 ownership interest representing individually or cumulatively more
3 than 50 percent of the interests in the entity.

4 A transfer of shares or other ownership interests that results in
5 a change in control of a corporation, partnership, limited liability
6 company, or any other legal entity is subject to reappraisal as
7 provided in subdivision (c) rather than this subdivision.

8 (e) To assist in the determination of whether a change of
9 ownership has occurred under subdivisions (c) and (d), the
10 Franchise Tax Board shall include a question in substantially the
11 following form on returns for *all* partnerships, banks, and
12 corporations (except tax-exempt organizations):

13 If the corporation (or partnership or limited liability company)
14 owns *or leases* real property in California, has cumulatively more
15 than 50 percent of the voting stock (or more than 50 percent of
16 total interest in both partnership or limited liability company capital
17 and partnership or limited liability company profits) (1) been
18 transferred by the corporation (or partnership or limited liability
19 company) since March 1, 1975, or (2) been acquired by another
20 legal entity or person during the year? (See instructions.)

21 If the entity answers “yes” to (1) or (2) in the above question *or*
22 *does not respond*, then the Franchise Tax Board shall furnish the
23 names and addresses of that entity and of the stock or partnership
24 or limited liability company ownership interest transferees to the
25 State Board of Equalization.

26 ~~SECTION 1. Section 64 of the Revenue and Taxation Code is~~
27 ~~amended to read:~~

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30 **All matter omitted in this version of the bill appears**
31 **in the bill as amended in the Senate, April 19, 2005.**
32 **(JR11)**
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